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THE PROPER GRADE OF DIPLOMATIC REPRESENTATION.—A REPLY.

BY JAMES F. BARNETT.

UNDER the title, "The Proper Grade of Diplomatic Representation," Mrs. Van Rensselaer Cruger in a recent number of this REVIEW writes of the place of the ambassador in our diplomatic service. The question is suggested by a recent address delivered by the Hon. John W. Foster, at St. Louis, before the International Congress of Arts and Sciences. In Mr. Foster's opinion, a single grade of diplomatic representation is to be preferred to the present hierarchy, established nearly a century ago at the Congress of Vienna. The special privileges of the ambassador, he thinks, are unfair, while the increased cost of living, necessary to maintain the ambassadorial rank, excludes all but a few rich men from the office.

Mrs. Cruger's remedy would be to provide official residences for our diplomatic representatives, "in which all envoys, rich or poor, shall be expected to reside in a condition of quiet and unostentatious elegance consistent with republican institutions." As a result, she thinks, the style of living would be approximately the same, whatever the personal means of the incumbent; and diplomatic life would, as of old, be open to the Irvings, BANCROFTS, MOTLEYS and LOWELLS of a later day.

The ambassadorship was introduced into our foreign service by the Act of Congress of March 1st, 1893. This Act was passed at the very end of the last session of Congress under the Harrison administration. Coming, as it did, on the eve of a new Democratic régime, the measure seems to have been passed without discussion.

Mr. Cleveland immediately availed himself of this authority by accrediting as ambassadors the new American representatives

to England, France, Germany and Italy. No further additions were made to the number until Mr. McKinley's first administration, when, in December, 1898, our ministers to Mexico and Russia were accredited as ambassadors. In June, 1902, similar action was taken as to the legation to Austro-Hungary, and last year the Brazilian mission became an embassy. The present number of American representatives of this class is therefore eight.

The text of the Act of March 1st, 1893, is as follows:

"Whenever the President shall be advised that any foreign government is represented, or is about to be represented, in the United States by an ambassador, envoy extraordinary, minister plenipotentiary, minister resident, special envoy or *chargé d'affaires*, he is authorized, at his discretion, to direct that the representative of the United States to such government shall bear the same designation. This provision shall in no wise affect the duties, powers or salary of such representative."

Mrs. Cruger supposes that, "whatever be the urgent need of this country for an envoy of ambassadorial rank, at a particular time or place, the President is powerless to take the initiative in appointing him. Not until the government to which he is to be accredited has actually taken the first step does the law in question become operative." This observation is correct, however, only in the sense that there may be practical difficulties in the way of the President's raising a particular envoy to the rank of ambassador, in the absence of an appropriation by Congress for the salary of such an office. The Constitution gives to the President the power, "by and with the advice and consent of the Senate, to appoint ambassadors and other public ministers." This power is absolute and exclusive. The function of Congress here consists in appropriating salaries. Indeed, in the earlier years of the Republic, Congress was accustomed to appropriate a lump sum for carrying on the foreign relations of the United States, and the President allotted it to our respective representatives sent abroad, as he saw fit.

The point above alluded to was settled by an opinion of Attorney-General Cushing so long ago as 1855, when he ruled that an Act of Congress which provided that the President should appoint diplomatic representatives of a certain grade to certain countries was clearly unconstitutional. Mr. Cushing expressly held that, "The President has power by the Constitution to appoint diplomatic agents of any rank, at any place, and at any

time, subject to the constitutional conditions of relation to the Senate." This is a matter, I believe, as to which there is some misapprehension. Even a person in such high place as the late Cushman K. Davis, then Chairman of the Foreign Relations Committee of the Senate, when the matter was called to his attention, said that he "supposed that Congress created the offices."

Of course, if Congress makes an appropriation to pay the salary of an envoy to a particular post, and the President accredits the incumbent as an ambassador, the appointee could not lawfully receive the salary. If he happened to be a man of independent means, he might consent to forego his salary temporarily, or the President might direct that he be paid from the emergency fund. In fact, the chief purpose of the law of March 1st, 1893, was to obviate the difficulty as to salary.

In so far, therefore, as this law appears to limit the circumstances in which the President may appoint an ambassador, it is of no binding force whatever. At best, it is but an expression of opinion by the members of the Fifty-second Congress that the President should await the action of foreign governments before exercising this prerogative. To this extent the law is an anomaly, and ought to be amended, so that a diplomatic officer may be promoted whenever the President deems expedient. As a question of constitutional law, there should be no doubt on the subject. When the President has acted in the matter, it becomes the duty of Congress to appropriate such salary as it may think ought to be attached to the office. But, surely, when, as in the case under discussion, no change of salary is involved, and where the question is purely one of expediency in managing the foreign affairs of the government, there can be no doubt of the obligation of Congress to make the necessary verbal alterations in the law. The question of rank is disposed of finally, when the Senate acts on the nomination of the proposed ambassador.

An incident in the history of our foreign relations will serve as an illustration of a possible emergency. In April, 1813, during a recess of the Senate, President Madison commissioned Albert Gallatin, John Quincy Adams and James Bayard, Envoys Extraordinary and Ministers Plenipotentiary to negotiate a treaty of peace with Great Britain, under the proffered mediation of Russia. The situation was one calling for prompt and decisive action. Subsequently, when their nominations were submitted

to the Senate for confirmation, a disposition was shown to censure the President's course, on the ground that he had attempted unconstitutionally to fill a vacancy in offices, which, it was alleged, had no legal existence. No formal action was taken by the Senate, a resolution of protest being ordered to lie on the table. As President Monroe afterwards observed, in a similar situation, the question involved was that of appointment to offices "not created by Congress, but existing by the law of nations."

As Mrs. Cruger suggests, there seems to be little likelihood that European governments would agree to the levelling process in diplomatic rank proposed by Mr. Foster. At several European capitals during the last thirty-five years, a number of legations have been raised to embassies. Just prior to the Franco-Prussian war, there was but one embassy at Madrid (that of France); none at Florence (then the Italian capital) and only two at Berlin. The unification of Italy, and the formation of the German Empire, were naturally followed by an exchange of ambassadors with the other great Powers. Notwithstanding the decadence of Spain in the intervening time, there are five embassies at Madrid to-day. At Constantinople, the unsolved Eastern question, and the ambassadorial right of personal interview with the Sultan (important in an absolute monarchy), explain the presence there of seven embassies. On the other hand, "minister resident" and "*chargé d'affaires*" have been almost everywhere superseded by "envoy extraordinary, etc.," except in the exchange of diplomatic agents with the smaller Spanish-American countries, with some of the Balkan states and with the lesser Asiatic states, Corea and Siam. In our own service, we now have but two ministers resident, whom we send to the Dominican Republic and to Liberia. The recent action of Brazil in reference to the Washington mission is likely to be followed in due time by other states, so that finally all the greater countries will be represented by ambassadors at capitals where their interests are important. Smaller states, which perforce must play a lesser part in world-politics, will probably be content to retain the thoroughly dignified office of envoy. It would seem, therefore, that the net result will be a return to the old classification; viz., diplomatic agents of the first and second class, the former to be known as "ambassadors," and the latter as "envoys." Possibly, this may be only an intermediate stage in the development, and eventually Mr. Foster's

ideal condition may be reached when "all distinctions and special privileges are abolished and a single grade is established in all the capitals of the world."

Meanwhile, the rule of "first come, first served" should govern as to interviews with ministers at the Foreign Office. As to the ambassador's right to demand a personal interview with the head of the state, the latest authorities seem to agree that the privilege is not much greater than that accorded to the envoy. The right must necessarily be restricted by the convenience of the President or sovereign (as the case may be), and by the limitations imposed by constitution in all but the absolute monarchies. Matters of precedence, on occasions of ceremony, are likely to be of little consequence, except to the persons immediately involved.

With Mrs. Cruger's plea for official residences for our diplomatic representatives, all reasonable-minded persons will be in hearty accord. In February, 1897, Mr. Olney, then Secretary of State, transmitted to Congress a report on this subject, based on information supplied by our representatives abroad. It will be interesting to recall some of the statistics then presented.

The list of governments owning official residences at the several foreign capitals was as follows:

Vienna	Germany, Great Britain, Russia.
Brussels	Germany, Great Britain.
Pekin	All the Great Powers except the United States.
Paris	Austria-Hungary, Germany, Great Britain, Russia.
Berlin	Austria-Hungary, France, Great Britain, Spain, Sweden.
The Hague	France, Germany, Great Britain, Japan (last two under long leases).
St. Petersburg	Austria-Hungary, France, Germany, Great Britain, Turkey (last two have long leaseholds).
Madrid	France, Germany, Great Britain, Italy. Under long leases: Austria-Hungary, Belgium, Mexico, Portugal.
Constantinople	All the Great Powers except the United States, including summer residences at Therapia.
Berne	France.
London	Leaseholds from twenty to seventy years by all the Great Powers except the United States.
Teheran	France, Germany, Great Britain, Russia, Turkey.
Rome	Germany, Great Britain, Turkey.

The United States owns legation buildings only at Tokio, Seoul, Bangkok and Tangier.

The cost of purchasing residences as estimated by our ministers at the various capitals was as follows:

Vienna	\$146,000	
Brussels	25,000	to \$50,000
Pekin	35,000	
Paris	300,000	
Berlin	225,000	to 800,000
London	60,000	to 500,000
The Hague	16,000	to 32,000
Lisbon	20,000	
St. Petersburg	200,000	to 400,000
Stockholm	35,000	to 40,000
Berne	30,000	to 40,000
Constantinople	100,000	
Teheran	15,000	to 20,000
Rome	90,000	to 200,000

The most recent report on this subject is one from acting Secretary of State Loomis, transmitted to Congress on January 8th, 1904, and refers to the purchase of a permanent legation building at The Hague. It is accompanied by a despatch from Minister Newell, of May 6th, 1903, from which we learn that there had been offered to the United States the celebrated De Witt House, so called from having been the home of the brothers De Witt immediately prior to their assassination. It is described as a commodious house of twenty-five rooms, located in the best and most convenient situation in the city for the purpose. The interior is described as being finished in handsome old oak.

With the International Court of Arbitration established at The Hague, is there any doubt, in view of the increasing importance of this post, and the presence from time to time of American members of the arbitration tribunal, that this country should maintain a permanent legation residence at the Dutch capital, where France, Germany, Great Britain and Japan already have buildings of this character? It is not likely that Congress would make an appropriation in a single year for more than one residence, but can there be a better place for beginning than at The Hague? On account of the location of the international court, it is unique among all our legations of lesser rank. The establishment of a permanent home at The Hague would not fail to touch the public sentiment of Europe, and would be to all the nations an additional guaranty of our intention to resort, whenever possible, to the international tribunal.

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